

Internal Revenue Service  
Director, Exempt Organizations  
Rulings and Agreements

Department of the Treasury  
P.O. Box 2508 - EP/EO  
Cincinnati, OH 45201

Date: [REDACTED]

Employer Identification Number:  
[REDACTED]

Person to Contact - I.D. Number:  
[REDACTED]

Contact Telephone Numbers:

Phone  
[REDACTED]

FAX  
[REDACTED]

Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income tax under the provisions of section 521 of the Internal Revenue Code of 1986 and its applicable Income Tax Regulations. Based on the available information, we have determined that you do not qualify for the reasons set forth on Enclosure I.

Consideration was given to whether you qualify for exemption under other subsections of section 501(c) of the Code. However, we have concluded that you do not qualify under another subsection.

As your organization has not established exemption from Federal income tax, it will be necessary for you to file an annual income tax return on Form 1041 if you are a Trust, or Form 1120 if you are a corporation or an unincorporated association.

If you are in agreement with our proposed denial, please sign and return one copy of the enclosed Form 6018, Consent to Proposed Adverse Action.

You have the right to protest this proposed determination if you believe it is incorrect. To protest, you should submit a written appeal giving the facts, law and other information to support your position as explained in the enclosed Publication 892, "Exempt Organizations Appeal Procedures for Unagreed Issues." The appeal must be submitted within 30 days from the date of this letter and must be signed by one of your principal officers. You may request a hearing with a member of the office of the Regional Director of Appeals when you file your appeal. If a hearing is requested, you will be contacted to arrange a date for it. The hearing may be held at the Regional Office or, if you request, at any mutually convenient District Office. If you are to be represented by someone who is not one of your principal officers, he or she must file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements as set forth in Section 601.502 of the Statement of Procedural Rules. See Treasury Department Circular No. 230.

[REDACTED]

We have sent a copy of this letter to your representative as indicated in your power of attorney.

If we do not hear from you within the time specified, this will become our final determination.

Sincerely,

[REDACTED]

Director, Exempt Organizations  
Rulings and Agreements

Enclosures: 3

ENCLOSURE I

FACTS

The [REDACTED] was incorporated under the [REDACTED] Cooperative Corporation Act as set forth in [REDACTED]. The Articles of Incorporation state that the organization was formed to engage in any lawful business necessary or desirable for the purposes of promoting, fostering and encouraging the intelligent and orderly harvesting, distributing and marketing of [REDACTED] and [REDACTED] products through cooperation. Furthermore, the organization will engage in any and all activities that may be conducive to the attainment of its purposes including marketing, selling, preserving, harvesting, drying, processing, manufacturing, canning, packing, grading, storing, handling or utilizing any [REDACTED] products produced or delivering to it by its members. Article IV of the Articles of Incorporation state that the organization is a membership organization and will be operated for the mutual benefit of its members on a cooperative service-at-cost basis as well as distributing profits on a patronage basis.

Application Form 1028, Application for Recognition of Exemption under Section 521 of the Internal Revenue Code, was submitted by [REDACTED] on [REDACTED]. You indicated on your Form 1028 that you will enter into contracts with qualified members to harvest [REDACTED] in [REDACTED] the [REDACTED] region of [REDACTED], in accordance with an annual cooperative permit to be issued by the [REDACTED]. You also stated that the harvested [REDACTED] will be processed and sold by [REDACTED] and that your members are prohibited from commercial [REDACTED] outside of [REDACTED]. Furthermore, you stated that you plan to deal with both members and non-members and that you planned to pay patronage dividends, however, they would not be distributed to members and non-members on the same basis. Finally, on Page 3 of Form 1028 you stated that membership is limited to individuals holding limited entry permits issued by the State of [REDACTED] for [REDACTED] harvest in [REDACTED] and that membership cannot be transferred nor terminated during the [REDACTED] season.

Additional information was submitted by [REDACTED] power of attorney on [REDACTED]. You stated in your letter dated [REDACTED] that each member holds a commercial [REDACTED] license issued by the [REDACTED]. The cooperative then identifies certain of its members to harvest the [REDACTED] in the designated area annually on behalf of all of its members. You also stated that the [REDACTED] occurs in the [REDACTED] which is a shallow protected body of water and no one else may commercially [REDACTED] in this area while [REDACTED] members are permitted to [REDACTED]. The live [REDACTED] are harvested and put into pens where processors pull them from a some later point. [REDACTED]

[REDACTED]

A second letter of additional information was submitted by your power of attorney on [REDACTED] the following information was included. Individual permit holders must make a determination on or before [REDACTED] of each year regarding whether or not to become a member and participate in the cooperative [REDACTED] Those [REDACTED] that decide to participate in the cooperative harvesting forego [REDACTED] right [REDACTED]

[REDACTED] Members are each required to contribute a [REDACTED] enhancement tax which is 2% of the harvest as required under State law. The tax revenues are then used by the [REDACTED] members invest heavily in preparation for the [REDACTED] season and in maintenance of their [REDACTED] equipment.

Finally, a third letter with attachments was submitted by your power of attorney on [REDACTED] the following information was included. [REDACTED] is responsible for monitoring, enhancing, and promoting the perpetuation and enhancement [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

#### LAW

Section 1361(b) of the Code provides that farmers' cooperatives exempt from taxation to the extent provided in subsection (a) thereof are farmers', fruit growers', or like associations organized and operated on a cooperative basis for the purpose of marketing the products of members or other producers, and turning back to them the proceeds of sales, less the necessary marketing expenses, on the basis of either the quantity or the value of the products furnished by them, or for the purpose of purchasing supplies and equipment for the use of members or other persons and turning over such supplies and equipment to them at actual cost plus necessary expenses.

Section 1.521-1(a) of the Income Tax Regulations states that cooperative associations engaged in the marketing of farm products for farmers, fruit growers, livestock growers, dairymen, etc., and turning back to the producers the proceeds of the sales of their products, less the necessary operating expenses, on the basis of either the quantity or the

[REDACTED]

value of the products furnished by them, are exempt from income tax except as otherwise provided in section 522, or Part 1, subchapter T, chapter 1 of the Code. Section 1.521-1(d) of the regulations provides that cooperative organizations engaged in occupations dissimilar from those of farmers, fruit growers, and the like, are not exempt.

Rev. Rul. 64-246, 1964-2 CB 154, provides that an association that is engaged in cooperatively marketing fish produced by its members and other patrons in privately-owned waters, is considered to be an organization composed of producers of "farm-raised fish" which are, in other words, farm products. Alternatively, Rev. Rul. 55-611, 1955-2 CB 276, provides that an association which purchases supplies and equipment for its members who are fishermen is not an association of farmers or fruit growers, or a like association within the meaning of section 521(b)(1) of the Internal Revenue Code of 1954 and is not exempt from Federal income tax under such section.

In Unset Scavenger Company, Incorporated v. Commissioner, 84 Fed (2d) 454, Ct. D. 1190, C. B. 1937-1, 202 at 204. The court stated:

"We believe, as the Commissioner contends, that under the principle of ejusdem generis, the words "like associations" are limited by the words "farmers" and "fruit growers" and as thus limited mean only such associations as market agricultural products, or purchase supplies and equipment for those who are engaged in producing agricultural products."

Rev. Rul. 55-611 also states that an association which is not composed of farmers, fruit growers, or persons engaged in similar pursuit is not exempt under section 521 of the Code unless it could be considered a "like association" within the intendment of that section. The provisions of any State laws are not controlling in determining status for Federal income tax purposes. See Munro L. Lyeth v. Hoey, 305 U. S. 188, Ct. D. 1370, C. B. 1938-2, 208.

Rev. Rul. 67-422, 1967-2 CB 217, states that in Dr. P. Phillips Cooperative v. Commissioner, 17 T.C. 1002 (1951), the Tax Court of the United States held that one who merely purchases a ripe crop at harvest would not be a producer within the meaning of what is now section 521 of the Code, since he fails to take the risks and responsibilities of the owner of a growing crop. Thus, a person is a producer if, as an owner or tenant, he bears the risks of production, cultivates, operates, or manages a farm for gain or profit—in short, if he is engaged in the trade or business of farming. A person who receives a rental (either in cash or in kind) which is based upon farm production is engaged in the trade or business of farming, and hence is a producer. Generally, a person who receives a fixed rental or other fixed compensation (without reference to production) is not a producer.

[REDACTED]

TAXPAYER'S POSITION

You consider your activities to be essentially a farming operation because [REDACTED] are harvested from a finite area and can only be harvested at the times and in the specific location determined by the [REDACTED]

You also stated in your letter dated [REDACTED], that although you do not harvest [REDACTED] on privately owned lands, your type of operations are very far removed from the historical methods [REDACTED] due to the fact that you have a limited number of harvesters in a defined area. [REDACTED]

Furthermore, you stated in your letter dated [REDACTED] that your members differ from commercial [REDACTED] in that they harvest the allocated amount, store [REDACTED] and use them on an as-needed basis. You further indicated that [REDACTED] can be viewed as someone who has invested in the right to harvest a crop before it is even planted and who thus bears the risk of production. You further stated that your members bear the risk of [REDACTED] levels in [REDACTED]. Finally, you stated that your members do not own the bed of the [REDACTED] where the [REDACTED] are harvested, the area is [REDACTED] land owned by the State of [REDACTED] however, the organization does have the exclusive right during specified periods to harvest the [REDACTED]

CONCLUSION

Your organization's members are harvesting [REDACTED] in non-privately owned waters. Your members do not bear the risks of production, nor do they cultivate, operate or manage a farm, therefore, your members are not considered producers under the relevant law. In fact, there is no crop to harvest. The [REDACTED] that are harvested are wild salmon that are not "grown" by your members, nor are they "grown" by anyone else. While there is some enhancement by various organizations of the [REDACTED] in parts of [REDACTED] there is no evidence to link the [REDACTED] that your members catch to the [REDACTED] that are enhanced by the various organizations. Your members are analogous to the individuals in the Dr. P. Phillips Cooperative case cited above in that they have purchased the right to take a ripe crop, [REDACTED], at harvest and are, therefore, not producers. Your organization is not an association of farmers or fruit growers, or a like association within the meaning of section 521(b)(1) of the Internal Revenue Code.

Accordingly, you do not qualify for exemption as an organization described in section 521 of the Code.

Form 6018  
(Rev. 8-83)

Department of the Treasury - Internal Revenue Service  
Consent to Proposed Adverse Action  
(All references are to the Internal Revenue Code)

Case Number

Date of Latest Determination Letter

Employer Identification Number

Date of Proposed Adverse Action Letter

Name and Address of Organization

I consent to the proposed adverse action relative to the above organization as shown below. I understand that if Section 7428, Declaratory Judgments Relating to Status and Classification of Organizations under Section 501(c)(3), etc. applies, I have the right to protest the proposed adverse action.

NATURE OF ADVERSE ACTION

☒ Termination of exemption

☐ Revocation of exemption, effective

☐ Modification of exemption from section 501(c)( ) to section 501(c)( ), effective

☐ Classification as a private foundation described in section 509(a), effective \*\*\*\*

☐ Classification as an private operating foundation described in sections 509(a) and 4942(j)(3), effective for

☐ Classification as an organization described in section 509(a)( ), effective

☐ Classification as an organization described in section 170(b)(1)(A)( ), effective

If you agree to the adverse action shown above, please sign and return this consent. You should keep a copy for your records.

If you sign this consent before you have exhausted your administrative appeal rights, you may lose your rights to a declaratory judgment under section 7428.

(Signature instructions on Back)

Name of Organization:

Signature and Title

Date

Signature and Title

Date

Appeals Office  
[REDACTED]  
[REDACTED]

Department of the Treasury

Person to Contact  
[REDACTED]

Employee ID Number [REDACTED]  
[REDACTED]

Date: [REDACTED]  
[REDACTED]  
[REDACTED]

Refer Reply to:  
[REDACTED]

In Re:  
EO Determination

[REDACTED]

We have considered your appeal of the adverse action proposed by the Director, Exempt Organizations. The paragraph(s) checked below indicate(s) our decision.

☒ (X) Your application for tax exemption from Federal income tax under section of the Internal Revenue Code is:

☐ ( ) approved. You will receive a separate determination letter.

☐ ( ) modified.

☒ (X) denied or ☐ ( ) revoked.

☐ ( ) You are not a private foundation as defined under code section 509(a).

☐ ( ) You are an operating foundation as described in code section 4942(j)(3).

☐ ( ) You have no liability for excise taxes under sections 4401 and 4411 for the above tax periods.

☐ ( ) Your liability for excise taxes under IRC section(s) for the above year(s) was properly reported on your return(s).

☐ ( ) There is no change to your unrelated business income tax liability as reported for the above year(s).



You may direct questions about the decision to the Appeals Officer whose name and telephone number are shown above.

Sincerely,

A large, solid black rectangular redaction box covering the signature of the Appeals Team Manager.

Appeals Team Manager

cc

Two horizontal black redaction bars covering the distribution list (cc) information.